

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ERNEST L. COX,

Plaintiff,

v.

VASUKI DARAM, et al.

Defendants.

No. 2:20-cv-1295 DB P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action under 42 U.S.C. § 1983. Plaintiff alleges defendants were deliberately indifferent to his serious medical needs when they deprived him of the use of a continuous positive airway pressure (“CPAP”) machine. By separate order, this court finds plaintiff has stated a cognizable Eighth Amendment claim against defendants. Herein, this court addresses plaintiff’s motions for a temporary restraining order (“TRO”) and for the appointment of counsel.

TEMPORARY RESTRAINING ORDER

Plaintiff seeks an order requiring defendants to provide him with a usable CPAP machine immediately.¹ Plaintiff has adequately alleged an imminent threat of irreparable injury. See

¹ This court notes that, in his complaint, plaintiff states that he is also filing a renewed motion for a temporary restraining order. However, that motion does not appear to have been included with plaintiff’s complaint for filing. This court therefore deems plaintiff’s original motion for a temporary restraining order as renewed and considers it herein.

1 Caribbean Marine Serv. Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988). This court
2 recognizes that defendants have not yet appeared in this action. This court intends to rule on
3 plaintiff's motion for a TRO within two weeks from the date of the present order. Below, this
4 court orders service of the present order on a representative of the Office of the California
5 Attorney General and on the Litigation Coordinator at Mule Creek State Prison. If defendants
6 wish to oppose plaintiff's motion for a TRO, they must do so within ten days of the date of this
7 order.

8 **REQUEST FOR APPOINTMENT OF COUNSEL**

9 In his complaint, plaintiff requests the appointment of counsel. The United States
10 Supreme Court has ruled that district courts lack authority to require counsel to represent indigent
11 prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In
12 certain exceptional circumstances, the district court may request the voluntary assistance of
13 counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir.
14 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).

15 The test for exceptional circumstances requires the court to evaluate the plaintiff's
16 likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in
17 light of the complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328,
18 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances
19 common to most prisoners, such as lack of legal education and limited law library access, do not
20 establish exceptional circumstances that would warrant a request for voluntary assistance of
21 counsel. In the present case, this court finds that plaintiff has articulated his claims thoroughly
22 and well. At this time, this court does not find the required exceptional circumstances for
23 appointment of counsel.

24 Accordingly, and good cause appearing, IT IS HEREBY ORDERED as follows:

25 1. This court deems plaintiff's motion for a TRO (ECF No. 1) to have been renewed.
26 This court will rule on that motion within fourteen days of the filed date of this order. If
27 defendants wish to oppose the motion, they must file any opposition within ten days of the filed

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1 date of this order. Any opposition filed must address the merits of plaintiff's motion and not be
2 limited to procedural issues.

3 2. Plaintiff's motion for the appointment of counsel (ECF No. 5) is denied without
4 prejudice to its renewal at a later stage of these proceedings.

5 3. The Clerk of the Court shall serve copies of this order on Monica Anderson,
6 Supervising Deputy Attorney General, and on the Litigation Coordinator of Mule Creek State
7 Prison by fax at (209)274-5018.

8 Dated: July 30, 2020

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11 DEBORAH BARNES
12 UNITED STATES MAGISTRATE JUDGE
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